

PRESTON MAXWELL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

This matter is before the Court on plaintiff's pro se Notice of Appeal. Plaintiff neither paid the appellate docketing fee nor submitted a motion to proceed in forma pauperis along with the Notice of Appeal. Plaintiff must either pay the appellate docketing fee of \$455.00 or file a motion to proceed in forma pauperis on appeal.

Title 28 U.S.C. § 1915(a) requires a prisoner seeking leave to appeal in forma pauperis to submit an affidavit of poverty and a certified copy of his prison account statement for the six month period immediately preceding the filing of the notice of appeal. Additionally, § 1915(b)(1) requires a prisoner seeking leave to proceed on appeal in forma pauperis to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly

balance in the prisoner's account for the six month period immediately preceding the filing of the notice of appeal. See 28 U.S.C. § 1915 (b)(1). After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. See 28 U.S.C. § 1915 (b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid.

Plaintiff has not submitted a motion for leave to proceed in forma pauperis on appeal or a certified copy of his prisoner account statement. However, the Court assumes that because plaintiff did not submit the filing fee with his notice of appeal, he intends to seek leave to proceed in forma pauperis on appeal. Therefore, the Court will order plaintiff to submit an affidavit and a certified copy of his prisoner account statement for the six- month period immediately preceding the filing of his notice of appeal.

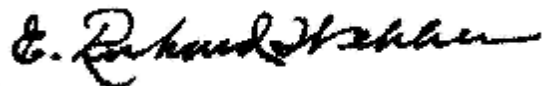
Accordingly,

IT IS HEREBY ORDERED that plaintiff shall file a certified copy of his prisoner account statement for the six month period immediately preceding the filing of his notice of appeal on July 5, 2007, and a “motion to proceed on appeal in forma pauperis and affidavit in support -- prisoner cases” within thirty (30) days from the date of this order.

IT IS FURTHER ORDERED that if plaintiff fails to submit a certified copy of his prisoner account statement and a “motion to proceed on appeal in forma pauperis and affidavit in support” within thirty days from the date of this order, the Court will order him to pay the full \$455 filing and docketing fees for filing an appeal.

IT IS FURTHER ORDERED that the Clerk shall forward to plaintiff, together with a copy of this order, a form “motion to proceed on appeal in forma pauperis and affidavit in support -- prisoner cases.”

So Ordered this 9th Day of July, 2007.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE